STAATSCOURANT
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Overeenkomst tussen de bevoegde autoriteiten van Zwitserland en Nederland met betrekking tot de fiscale kwalificatie van een fonds dat naar Nederlands belastingrecht kwalificeert als besloten fonds voor gemene rekening en een fonds dat naar Zwitsers belastingrecht kwalificeert als limited partnership for collective capital investment

8 juni 2016
nr. IZV/2016/396M

De directeur Internationale Zaken en Verbruiksbelastingen heeft namens de staatssecretaris van Financiën het volgende besloten.

COMPETENT AUTHORITY AGREEMENT

The competent authorities of Switzerland and the Netherlands have reached the following mutual agreement regarding the application of the Convention between the Kingdom of the Netherlands and the Swiss Confederation for the avoidance of double taxation with respect to taxes on income signed at The Hague on February 26th, 2010 and the related Protocol (hereinafter: 'the Convention') to investors in a Netherlands closed fund for mutual account '*besloten* Fonds voor Gemene Rekening' (hereinafter: 'closed FGR') and to investors in a Swiss limited partnership for collective capital investment. This Agreement is entered into under Article 25, paragraph 3 (Mutual Agreement Procedure) of the Convention.

I. Regarding a Netherlands closed FGR

1. This Agreement applies to closed FGRs formed in conformity with the Decree of 11 January 2007, CPP2006/1870M, Dutch. Gov. Gaz. No 15, 2007, or any future similar decree that may replace the said decree. A closed FGR can act as a pooled investment vehicle for the assets of pension funds and other investors. The closed FGR invests these assets on behalf of those investors.
2. The competent authorities of the Netherlands and Switzerland agree that a closed FGR[1] is fiscally transparent.
3. A closed FGR can also consist of several closed FGRs as described in par. 4 of the above-mentioned decree. Such umbrella fund is also considered to be fiscally transparent.
4. Since a closed FGR is fiscally transparent, all items of income derived by the fund from the fund assets are allocated to the investors in the closed FGR in proportion to their participation in the fund. As such, a closed FGR is not entitled to the benefits under the Convention in respect of items of income derived on behalf of its investors.

Request for application of the benefits of the Convention on behalf of investors.

5. A closed FGR which is established in the Netherlands and which receives items of income to which the Convention applies may itself, represented by its fund manager or its depository claim the benefits of the Convention on behalf of the investors which are residents of the Netherlands under the Convention.
6. Where the participation of investors which are residents of the Netherlands in a closed FGR exceeds 95%, the closed FGR may itself, represented by its fund manager or its depository, claim, on behalf of the investors which are residents of a third state, if applicable, the benefits of the convention for the avoidance of double taxation between Switzerland and the state of residence of the third state investors.
7. Such refund claims may be subject to enquiry and, where requested, a fund manager or depository shall provide relevant information which may include amongst others a schedule of investors which are residents of the Netherlands under the Convention or if paragraph 6 is applicable, residents of a third state (names, addresses), the allocated items of income relevant to a claim and a statement by these investors confirming their entitlement to benefits under the Convention or

[1] Various translations of 'besloten Fonds voor Gemene Rekening' are possible, such as 'fund for mutual account' or 'fund for joint account'.

the convention mentioned in paragraph 6 above, including a certificate of residency by the State of residence of the investors.

8. A closed FGR may not make a refund claim for benefits in respect of an item of income on behalf of any investor in the closed FGR if the investor has itself made a refund claim for benefits in respect of the same item of income.

II. Regarding a Swiss limited partnership for collective capital investment

9. This Agreement applies to limited partnerships for collective capital investment as defined in Article 98 of the Federal Act on Collective Investment Schemes of 23 June 2006. A limited partnership for collective capital investment can act as a pooled investment vehicle for the assets of pension funds and other investors. A limited partnership for collective capital investment invests these assets on behalf of the investors.
10. The competent authorities of the Netherlands and Switzerland agree that a limited partnership for collective capital investment is fiscally transparent.
11. A limited partnership for collective capital investment can also consist of several limited partnerships for collective capital investment. Such umbrella fund is also considered to be fiscally transparent.
12. Since a limited partnership for collective capital investment is fiscally transparent, all items of income derived by such partnership from the partnership's assets are allocated to the investors in the partnership in proportion to their participation in the partnership. As such, a limited partnership for collective capital investment is not entitled to the benefits under the Convention in respect of items of income derived on behalf of its investors.

Request for application of the benefits of the Convention on behalf of investors

13. A limited partnership for collective capital investment which is established in Switzerland and which receives items of income to which the Convention applies may itself, represented by its fund manager or its depository claim the benefits of the Convention on behalf of the investors which are residents of Switzerland under the Convention.
14. Where the participation of investors which are residents of Switzerland in a limited partnership for collective capital investment exceeds 95%, the partnership may itself, represented by its fund manager or its depository, claim, on behalf of the investors which are residents of a third state, if applicable, the benefits of the convention for the avoidance of double taxation between the Netherlands and the state of residence of the third state investors.
15. Such refund claims may be subject to enquiry and, where requested, a fund manager or depository shall provide relevant information which may include amongst others a schedule of investors which are residents of Switzerland under the Convention or if paragraph 14 is applicable, residents of a third state (names, addresses), the allocated items of income relevant to a claim and a statement by these investors confirming their entitlement to benefits under the Convention or the convention mentioned in paragraph 14 above, including a certificate of residency by the State of residence of the investors.
16. A limited partnership for collective capital investment may not make a refund claim for benefits in respect of an item of income on behalf of any investor in the partnership if the investor has itself made a refund claim for benefits in respect of the same item of income.

The Agreement shall enter into force on the later of the dates of the signing of the agreement by the competent authorities of Switzerland and the Netherlands and shall apply to claims which respect to items of income received after the date of the entry into force of this Agreement.

This Agreement shall be subject to regular review.

Agreed by the undersigned competent authorities:

14 March 2016

For the Swiss Competent Authority
P. Duss
State Secretariat for International Financial Matters

For the Netherlands Competent Authority
H. Roodbeen
Ministry of Finance